

**STATE OF WEST VIRGINIA
WEST VIRGINIA SECURITIES DIVISION
BEFORE THE SECURITIES COMMISSIONER
CHARLESTON, WEST VIRGINIA 25306**

ORDER NO.96-0856

**ORDER EXEMPTING CERTAIN OFFERS OF
SECURITIES
MADE ON THE INTERNET FROM SECURITIES
REGISTRATION**

Pursuant to the authority granted to him by Chapter 32 of the West Virginia Code, 1931, as amended ("the West Virginia Uniform Securities Act", hereinafter sometimes referred to as the "Act"), and particularly Chapter 32, Article 4, Section 412 of the Act, the Commissioner of Securities ("Commissioner") has reviewed the North American Securities Administrators Association, Inc. (**NASAA**) resolution on the offer and sale of securities on the Internet, which was adopted on January 7, 1996.

Pursuant to said review, the Commissioner is of the opinion and finds as follows:

FINDINGS OF FACT

WHEREAS Chapter 32, Article 4, Section 402(b) of the Act states, "The following transactions are exempted from Sections 301 and 403" of the Act;

WHEREAS the Commissioner acknowledges that an attempt or offer to dispose of or the solicitation of an offer to buy a security or an interest in a security for value, that is made on or through the Internet, the World Wide Web, or a similar proprietary or common carrier electronic system (such systems hereinafter being referred to collectively as the "Internet"), would constitute an "offer" for purposes of Section 401 (j)(2) of the Act and would otherwise trigger the registration and sales literature filing requirements in Sections 301 and 403 of the Act;

WHEREAS the Commissioner also acknowledges that use of the Internet may be a legitimate means of raising capital and

that a communication made on the Internet may be directed not only to particular recipients, but also to anyone with access to the Internet;

WHEREAS the Commissioner finds that the issuance of this ORDER is necessary or appropriate in the public interest or for the protection of investors. The Commissioner deems this ORDER consistent with the purpose fairly intended by policy and provisions of the Act;

WHEREAS the Commissioner further finds that the registration of certain Internet offers is not necessary or appropriate in the public interest or for the protection of investors.

CONCLUSIONS OF LAW

1. Chapter 32, Article 4, Section 412(a) of the Act provides that the Commissioner may, from time to time, make orders as necessary to carry out the provisions of the Act.
2. This ORDER is consistent with the purposes fairly intended by the policies and provisions of the Act as required in Chapter 32, Article 4, Section 412(b) of the Act.
3. The Act's exemption provision, specifically Chapter 32, Article 4, Section 402(b), are sufficiently broad to allow the Commissioner flexibility to adopt procedures for implementation of the NASAA resolution regarding the offer and sale of securities on the Internet.

It is, therefore, ordered that:

- (1) Pursuant to Section 402(b) of the Act, offers of securities made by or on behalf of issuers on or through the Internet shall be exempt from Sections 301 and 403 of the Act if the following conditions are observed:
 - (A) The Internet offer indicates, directly or indirectly, that the securities are not being offered to residents of West Virginia;
 - (B) The Internet offer is not specifically directed to any person in West Virginia by or on behalf of the issuer of the securities; and

- (C) No sales of the issuer's securities are made in West Virginia as a result of the Internet offering until such time as the securities being offered have been registered under Sections 303 or 304 of the Act and a final prospectus or Form U-7 is delivered to West Virginia investors prior to such sales.
- (2) Nothing in this ORDER shall preclude an issuer or a person acting on behalf of an issuer who offers securities on the Internet or effects sales to West Virginia residents following such an offering, from relying upon any other applicable exemption pursuant to Section 402 of the Act, nor shall this ORDER relieve such persons from liability under Section 101 of the Act.
- (3) This ORDER shall remain in effect until modified or vacated by the Commissioner.

Entered this 17th day of April, 1996.

Glen B. Gainer III
Commissioner of Securities

By: Frank D. Childers
Deputy Commissioner of Securities